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Supreme Court of the United States

October Term, 1949

No. 783

CLARENCE JACKSON,

Petitioner,

against

HERMAN J. RUTHAZER, Warden of the City Prison, Borough of Manhattan, 125 White Street, New York,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

This is an application for a writ of certiorari to review an order of the United States Court of Appeals, Second Circuit, filed March 17, 1950, unanimously affirming an order of the United States District Court for the Southern District of New York dismissing a writ of habeas corpus and remanding petitioner to the custody of the Warden of the City Prison of the City of New York (13, 17).*

* Unless otherwise indicated, references are to pages of the printed record in this proceeding. References marked "AD" refer to pages of the printed record on appeal from the New York Supreme Court, New York County, to the New York Supreme Court, Appellate Division, First Department, in the case of *People ex rel. Jackson* v. *Ruthazer,* which record was made a part of the record in this proceeding (6-7; petition, pp. 1-2).

Introduction

Petitioner, a fugitive from the State of Georgia, whose rendition to that state has been ordered, seeks to raise the question whether the prospect of cruel and unusual punishment is sufficient ground to defeat a warrant for extradition [U. S. Constitution, Art. 4, §2; 18 U. S. C. §3182; *cf. Johnson* v. *Dye* (U. S. C. A. 3rd 1949) 175 Fed. (2d) 250, rev'd on other grounds 338 U. S. 864]. However, that question is not presented by this record. As the courts below have found, the factual contentions upon which petitioner seeks to proceed were properly rejected by the New York courts, after a full and fair hearing.

State Proceedings

Petitioner was arrested upon a warrant issued by the governor of New York, pursuant to a requisition by the governor of Georgia charging petitioner with having escaped after having been committed to prison following a conviction for the crime of burglary (7; AD 15, 16-7). For the purpose of allowing petitioner an opportunity to test by habeas corpus the legality of the rendition proceedings, he was committed to respondent's custody (6-7; AD 11-2, 13). Petitioner, thereafter, obtained a writ of habeas corpus from the Supreme Court, New York County, and sought to defeat extradition by alleging that certain Georgia officials had threatened to take his life (7; AD 5-9).

A hearing was held in Supreme Court, New York County, at which hearing petitioner did not question the

sufficiency of the Georgia requisition or the New York warrant, and at which he admitted that he was the person named in those documents, that he had been convicted and sentenced to imprisonment in Georgia for the crime of burglary, and that he had subsequently escaped from such confinement (7-8; AD 16, 18, 45). He contended, however, that he had been subjected in Georgia to cruel and unusual punishment in the past, and that, if returned there, he might be so punished in the future (AD 6-7, 17-50, 146-8). Petitioner was permitted to testify at length as to the cruel and unusual punishment allegedly inflicted upon him in Georgia and as to the alleged threats of Georgia authorities upon which he based his fear of a renewal of such punishment, or deprivation of his life, should he be returned to that state (7-8; AD 20-45).

At the conclusion of the cross-examination of petitioner, respondent moved to dismiss the writ, and the matter was adjourned to permit the submission of legal memoranda (AD 45-51). On the adjourned date, respondent was granted leave to reopen the case (AD 53-4). He thereupon produced witnesses on behalf of the Georgia authorities and introduced in evidence affidavits from certain other Georgia officials (AD 54-129, 152-200). Though petitioner objected to the reopening on the ground of surprise, he at no time requested an adjournment in order to meet the new evidence produced by respondent (AD 53, 129-30; *cf.* petitioner's brief, pp. 16-17). Moreover, although the irregularities about which he now complains (petitioner's brief, pp. 18-20) appeared on the face of the documents, he at no time called such irregularities to the attention of the trial court (AD 156-8, 158-60, 192-4, 195-6, 197-200; see AD 53-4, 88-90, 107-9, 130).

On June 20, 1949, Mr. Justice HAMMER of the Supreme Court, New York County, dismissed the writ of habeas corpus on the law and the facts [3, 8; AD 3-4, 201-15; *People ex rel. Jackson* v. *Ruthazer* (Sup. Ct. N. Y. Co. 1949) 196 N. Y. Misc. 34, 90 N. Y. Supp. (2d) 205]. The opinion first summarized the testimony of petitioner, and found it to be unsubstantiated and not reliable [see *id.*, 196 N. Y. Misc. 34, 37-39, 90 N. Y. Supp. (2d) 205, 208-210]. Thereafter, respondent's evidence was thoroughly considered and found to be true [see *id.*, 196 N. Y. Misc. 34, 39-41, 90 N. Y. Supp. (2d) 205, 210-211]. Finally, the court stated [*id.*, 196 N. Y. Misc., at p. 43, 90 N. Y. Supp. (2d), at pp. 213-214]:

> "The conclusion is that relator has failed to prove the acts of brutality or of cruel or inhuman punishment claimed and that if returned he will be subjected to cruel and inhuman treatment, or be placed in grave danger of bodily injury or death. On the contrary, the evidence on behalf of the State of Georgia shows that the relator has been accorded due process of law and if returned will not be subjected to cruel and inhuman treatment or brutal and unusual punishment."

The dismissal of the writ was unanimously affirmed, without opinion, by the New York Supreme Court, Appellate Division, First Department [8-9; *People ex rel. Jackson* v. *Ruthazer* (1st Dept. 1949) 276 N. Y. App. Div. 832, 93 N. Y. Supp. (2d) 729]. On January 12, 1950, the New York Court of Appeals, without opinion, unanimously denied leave to appeal [8, 10; *People ex rel. Jackson* v. *Ruthazer* (1950) 300 N. Y. Adv. Sheet No. 563, p. *i*].

On January 13, 1950, Judge FULD of the New York Court of Appeals denied, for lack of jurisdiction, petitioner's application for a stay of proceedings pending application to this Court for a writ of certiorari to review the order of the New York Supreme Court, Appellate Division, First Department (3-4). On January 14th, Mr. Justice JACKSON of this Court denied a similar application for a stay (4).

Federal Proceedings

Thereupon, on January 16th, petitioner, alleging the same grounds presented before the New York courts, obtained a writ of habeas corpus from the United States District Court for the Southern District of New York (2-5). Upon the return day, petitioner was granted an adjournment of two weeks in order to exhaust his state remedies by applying to this Court for a writ of certiorari to review the state court determination, and to the appropriate justices for a stay pending such application. Petitioner's application for such a stay was denied by each of the available justices of the New York Supreme Court, Appellate Division, First Department, and also by each of the seven available justices of this Court (5-6). Petitioner filed no application for a writ of certiorari to review the state court determination.

On the adjourned date before the District Court, petitioner claimed that, since he had exhausted his state remedies, he was entitled to a writ of habeas corpus from that court, and again offered to prove that he had been subjected in Georgia to cruel and unusual punishment

in the past, and that, if returned there, he might be killed or so punished in the future. Petitioner's counsel again admitted that petitioner is the person named in the requisition of the governor of Georgia and the warrant of the governor of New York, that he was convicted of a crime and sentenced to imprisonment in Georgia, and that he fled to New York following his escape from such confinement (see 11). Respondent, offering in evidence the record of the proceedings and testimony at the hearing in the Supreme Court, New York County, which was made part of the record in this matter, moved to dismiss the writ on the ground that petitioner's admissions required such dismissal as a matter of law, and on the further ground that, since petitioner had already had a full hearing on the identical allegations in the state courts, the District Court should, in the exercise of discretion, decline to conduct a second hearing (6-9).

On February 20, 1950, District Judge CLANCY entered an order dismissing petitioner's writ of habeas corpus on the law and the facts, the opinion noting that petitioner had already had a full and complete hearing and review in the state courts upon the identical questions submitted to the District Court (12-3).

The order of the District Court dismissing the writ was unanimously affirmed by the United States Court of Appeals, Second Circuit (17). The opinion filed by that court based the affirmance solely upon the ground that the state courts had already given petitioner a full hearing on the merits (14-6).

POINT I

No substantial question is presented.

The District Court, in dismissing petitioner's writ, stated (12):

> "A petition for a writ in the State Court set forth substantially the same grounds as have been submitted to us. The Federal Constitution and the Law of Extradition, which is Federal, bind the State Court Justices just as much as they do in this court. He received a full hearing from a patient, understanding and erudite Justice. * * * The matters passed on as we have stated by the State Court were identically the ones submitted to us for decision. This includes his rights under the United States Constitution. There is no reason to disagree in one iota from the decision of the State Court Justice; the only criticism the relator himself has concerns the entertainment of certain affidavits in evidence which the findings and decision show were not the basis of any finding."

The Court of Appeals, Second Circuit, in affirming the dismissal of the writ, first reviewed the state court proceedings, as follows (16):

> "In this case the relator was given a full hearing on the merits in a court of the State of New York. He told his story at length; he was represented by able counsel. That counsel cross-examined the witnesses for the State of Georgia who appeared and gave their testimony. We find nothing in what is pressed upon us now to indicate that the New York State hearing was not full and fair. We think it was.
>
> "In an elaborate opinion the trial judge decided against the relator. * * * He made a careful examination of the evidence presented at the hearing, care-

> fully rejecting a collection of affidavits presented on behalf of Georgia which he deemed inadmissible. Finally he reached the conclusion, upon his examination of the evidence, that the story told by the relator was not to be believed."

The court then concluded (*ibid.*):

> "The relator had a hearing which was both full and fair. A conclusion on the facts thus fully presented has been reached against him. We see no argument for saying that a man who has had such full opportunity for having his case heard before a disinterested and sympathetic court has any complaint. His rights have been as fully protected as any human system of administering justice can protect them."

In *Darr* v. *Burford,* 339 U. S. 200, this Court stated (at pp. 214-215):

> "All the authorities agree that *res judicata* does not apply to applications for habeas corpus. The courts must be kept open to guard against injustice through judicial error. Even after this Court has declined to review a state judgment denying relief, other federal courts have power to act on a new application by the prisoner. On that application, the court may require a showing of the record and action on prior applications, *and may decline to examine further into the merits because they have already been decided against the petitioner.*" (Emphasis supplied.)

It follows, therefore, that no substantial question is presented, and the petition for a writ of certiorari should be denied. (See, also, *Salinger* v. *Loisel,* 265 U. S. 224, 230-232; *Wong Doo* v. *United States,* 265 U. S. 239, 240-241; *Ex Parte Hawk,* 321 U. S. 114, 118.)

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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May, 1950